

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 3851 of 2007(H)

OA.74/2006 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER:

**K. GOPAKUMAR, S/O.M.DAMODARAN NAIR,
4/412, KUTHANUR, PALAKKAD-678 721.**

BY ADV. SRI.S.VINOD BHAT

RESPONDENT:

**THE FEDERAL BANK LIMITED,
HAVING ITS REGISTERED OFFICE AT ALUVA,
AND BRANCH AMONG OTHER PLACES AT
ARoor, ALAPPUZHA DISTRICT.**

BY STANDING COUNSEL B.S.KRISHNAN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

THOTTATHIL B. RADHAKRISHNAN, J.
.....

W.P.(C) NO. 3851 OF 2007
.....

Dated this the 9th day of February, 2007

J U D G M E N T

The petitioner is aggrieved by an order of the Debt Recovery Tribunal. He moved the Tribunal contending that there was a post recovery certificate agreement between the banker and him whereby the Bank had agreed to let him pay off the outstanding in 12 monthly instalments. He urged before the Tribunal that there was a gentlemen's agreement between the Manager and the writ petitioner that he would be extended such a facility and it was therefore that he agreed to the decree being passed against him. After hearing the parties, the Tribunal came to the conclusion that what is being projected is a pre decretal agreement and that, therefore, does not come within the provisions of law for the DRT to treat this as post decretal agreement to tie down the Bank to such a term. In a way the Tribunal is right because the consensus ad idem of the alleged agreement was obviously arrived, if at all, before the decree since the case of the petitioner is that the decree was so passed on the basis of the assurance given by the Bank Manager. Without

expressing anything on the merits or otherwise of that contention of the petitioner, as of now, more than 12 months have elapsed after the decree and even if there was a pre decree or post decree agreement between the parties, the period of 12 months for which the petitioner was requesting has also run out. So much so, either in law or on facts, the petitioner has not made out a case for exercise of the discretionary jurisdiction under Article 226 of the Constitution of India or the supervisory jurisdiction under Article 227, to interfere with the impugned order of the DRT. The total outstanding, as of now, would be between Rupees 10 and 13 lakhs with the accrued and the accruing interest.

2. Under such circumstances, after having heard the learned counsel for the petitioner and the Bank, it is directed that if the petitioner deposits an amount of Rs. 3 lakhs within a period of one month from today and a further amount of Rs.1 lakh on or before 29th of March 2007 and continues to deposit at the rate of Rs.1.5 lakhs on or before the last working day of every succeeding month commencing from April, 2007, enforcement proceedings to recover the outstanding dues to the Bank would

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stand deferred, to let the petitioner wipe off the outstandings as stated above. If there is default in making any of the deposits as aforesaid, the benefit of this judgment will stand recalled and the Bank will be entitled to forthwith proceed with further action in accordance with law.

Writ petition is disposed of as above.

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Rp